

IN THE SENATE

SENATE BILL NO. 1055

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO THE UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT; AMENDING TITLE 15, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 14, TITLE 15, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE TERMS, TO PROVIDE APPLICABILITY, TO AUTHORIZE ACCESS BY A PERSONAL REPRESENTATIVE TO A DIGITAL ASSET OF A DECEDENT, TO AUTHORIZE ACCESS BY A CONSERVATOR TO A DIGITAL ASSET OF A PROTECTED PERSON, TO AUTHORIZE ACCESS BY AN AGENT TO A DIGITAL ASSET OF A PRINCIPAL, TO AUTHORIZE ACCESS BY A TRUSTEE TO A DIGITAL ASSET, TO PROVIDE AUTHORITY FOR A FIDUCIARY UNDER CERTAIN CONDITIONS, TO PROVIDE FOR COMPLIANCE WITH THE UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT FOR CERTAIN PERSONS, TO PROVIDE IMMUNITY FOR A CUSTODIAN, TO PROVIDE FOR UNIFORMITY OF APPLICATION AND CONSTRUCTION, TO PROVIDE FOR RELATION TO THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT AND TO PROVIDE SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 15, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 14, Title 15, Idaho Code, and to read as follows:

CHAPTER 14

UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT

15-14-101. SHORT TITLE. This chapter shall be known and may be cited as the "Uniform Fiduciary Access to Digital Assets Act."

15-14-102. DEFINITIONS. As used in this chapter:

(1) "Account holder" means a person that has entered into a terms of service agreement with a custodian or a fiduciary for the person.

(2) "Agent" means an attorney in fact granted authority under a durable or nondurable power of attorney.

(3) "Carries" means engages in the transmission of electronic communications.

(4) "Catalogue of electronic communications" means information that identifies each person with which an account holder has had an electronic communication, the time and date of the communication and the electronic address of the person.

(5) "Conservator" means a person appointed by a court to manage the estate of a living individual. The term includes a limited conservator.

(6) "Content of an electronic communication" means information concerning the substance or meaning of the communication that:

(a) Has been sent or received by an account holder;

1 (b) Is in electronic storage by a custodian providing an electronic
2 communication service to the public or is carried or maintained by a
3 custodian providing a remote computing service to the public; and

4 (c) Is not readily accessible to the public.

5 (7) "Court" means the court in this state having jurisdiction in mat-
6 ters relating to the content of this chapter.

7 (8) "Custodian" means a person that carries, maintains, processes, re-
8 ceives or stores a digital asset of an account holder.

9 (9) "Digital asset" means a record that is electronic. The term does
10 not include an underlying asset or liability unless the asset or liability is
11 itself a record that is electronic.

12 (10) "Electronic" means relating to technology having electrical,
13 digital, magnetic, wireless, optical, electromagnetic or similar capabil-
14 ities.

15 (11) "Electronic communication" has the same meaning as the definition
16 in 18 U.S.C. section 2510(12), as amended.

17 (12) "Electronic communication service" means a custodian that pro-
18 vides to an account holder the ability to send or receive an electronic
19 communication.

20 (13) "Fiduciary" means an original, additional or successor personal
21 representative, conservator, agent or trustee.

22 (14) "Governing instrument" means a will, trust, instrument creating a
23 power of attorney or other dispositive or nominative instrument.

24 (15) "Information" means data, text, images, videos, sounds, codes,
25 computer programs, software, databases or the like.

26 (16) "Person" means an individual, estate, business or nonprofit en-
27 tity, public corporation, government or governmental subdivision, agency or
28 instrumentality, or other legal entity.

29 (17) "Personal representative" means an executor, administrator, spe-
30 cial administrator or person that performs substantially the same function
31 under law of this state other than this chapter.

32 (18) "Power of attorney" means a record that grants an agent authority
33 to act in the place of a principal.

34 (19) "Principal" means an individual who grants authority to an agent in
35 a power of attorney.

36 (20) "Protected person" means an individual for whom a conservator has
37 been appointed. The term includes an individual for whom an application for
38 the appointment of a conservator is pending.

39 (21) "Record" means information that is inscribed on a tangible medium
40 or that is stored in an electronic or other medium and is retrievable in per-
41 ceivable form.

42 (22) "Remote computing service" means a custodian that provides to an
43 account holder computer processing services or the storage of digital assets
44 by means of an electronic communications system, as defined in 18 U.S.C. sec-
45 tion 2510(14), as amended.

46 (23) "Terms of service agreement" means an agreement that controls the
47 relationship between an account holder and a custodian.

48 (24) "Trustee" means a fiduciary with legal title to property pursuant
49 to an agreement or declaration that creates a beneficial interest in an-
50 other. The term includes a successor trustee.

1 (25) "Will" includes a codicil, testamentary instrument that only ap-
2 points an executor and instrument that revokes or revises a testamentary in-
3 strument.

4 15-14-103. APPLICABILITY. (1) This chapter applies to:

5 (a) A fiduciary or agent acting under a will or power of attorney exe-
6 cuted before, on or after the effective date of this chapter;

7 (b) A personal representative acting for a decedent who died before, on
8 or after the effective date of this chapter;

9 (c) A conservatorship proceeding, whether pending in a court or com-
10 menced before, on or after the effective date of this chapter; and

11 (d) A trustee acting under a trust created before, on or after the ef-
12 fective date of this chapter.

13 (2) This chapter shall not apply to a digital asset of an employer used
14 by an employee in the ordinary course of the employer's business.

15 15-14-104. ACCESS BY PERSONAL REPRESENTATIVE TO DIGITAL ASSET OF
16 DECEDENT. Subject to section 15-14-108(2), Idaho Code, and unless otherwise
17 ordered by the court or provided in the will of a decedent, the personal rep-
18 resentative of the decedent has the right to access:

19 (1) The content of an electronic communication that the custodian is
20 permitted to disclose under the electronic communications privacy act, 18
21 U.S.C. section 2702(b), as amended;

22 (2) Any catalogue of electronic communications sent or received by the
23 decedent; and

24 (3) Any other digital asset in which at death the decedent had a right or
25 interest.

26 15-14-105. ACCESS BY CONSERVATOR TO DIGITAL ASSET OF PROTECTED PER-
27 SON. Subject to section 15-14-108(2), Idaho Code, the court, after an oppor-
28 tunity for hearing under state conservatorship law, may grant a conservator
29 the right to access:

30 (1) The content of an electronic communication that the custodian is
31 permitted to disclose under the electronic communications privacy act, 18
32 U.S.C. section 2702(b), as amended;

33 (2) Any catalogue of electronic communications sent or received by the
34 protected person; and

35 (3) Any other digital asset in which the protected person has a right or
36 interest.

37 15-14-106. ACCESS BY AGENT TO DIGITAL ASSET OF PRINCIPAL. (1) To the
38 extent a power of attorney expressly grants an agent authority over the con-
39 tent of an electronic communication of the principal and subject to section
40 15-14-108(2), Idaho Code, the agent has the right to access the content of
41 an electronic communication that the custodian is permitted to disclose un-
42 der the electronic communications privacy act, 18 U.S.C. section 2702(b), as
43 amended.

44 (2) Subject to section 15-14-108(2), Idaho Code, and unless otherwise
45 ordered by the court or provided by a power of attorney, an agent has the
46 right to access:

1 (a) Any catalogue of electronic communications sent or received by the
2 principal; and

3 (b) Any other digital asset in which the principal has a right or inter-
4 est.

5 15-14-107. ACCESS BY TRUSTEE TO DIGITAL ASSET. (1) Subject to section
6 15-14-108(2), Idaho Code, and unless otherwise ordered by the court or pro-
7 vided in a trust, a trustee that is an original account holder has the right
8 to access any digital asset held in trust, including any catalogue of elec-
9 tronic communications of the trustee and the content of an electronic commu-
10 nication.

11 (2) Subject to section 15-14-108(2), Idaho Code, and unless otherwise
12 ordered by the court or provided in a trust, a trustee that is not an original
13 account holder has the right to access:

14 (a) The content of an electronic communication that the custodian is
15 permitted to disclose under the electronic communications privacy act,
16 18 U.S.C. section 2702(b), as amended;

17 (b) Any catalogue of electronic communications sent or received by the
18 original or any successor account holder; and

19 (c) Any other digital asset in which the original or any successor ac-
20 count holder has a right or interest.

21 15-14-108. FIDUCIARY AUTHORITY. (1) A fiduciary that is an account
22 holder or has the right under this chapter to access a digital asset of an
23 account holder:

24 (a) Subject to the terms of service agreement, copyright law and other
25 applicable law, may take any action concerning the asset to the extent
26 of the account holder's authority and the fiduciary's power under the
27 law of this state other than this chapter;

28 (b) Has, for the purpose of applicable electronic privacy laws, the
29 lawful consent of the account holder for the custodian to divulge the
30 content of an electronic communication to the fiduciary; and

31 (c) Is, for the purpose of applicable computer fraud and unauthorized
32 computer access laws, including this state's law on unauthorized com-
33 puter access, an authorized user.

34 (2) Unless an account holder, after the effective date of this chap-
35 ter, agrees to a provision in a terms of service agreement that limits a fidu-
36 ciary's access to a digital asset of the account holder by an affirmative act
37 separate from the account holder's assent to other provisions of the agree-
38 ment:

39 (a) The provision is void as against the strong public policy of this
40 state; and

41 (b) The fiduciary's access under this chapter to a digital asset does
42 not violate the terms of service agreement even if the agreement re-
43 quires notice of a change in the account holder's status.

44 (3) A choice of law provision in a terms of service agreement is unen-
45 forceable against a fiduciary acting under this chapter to the extent the
46 provision designates law that enforces a limitation on a fiduciary's access
47 to a digital asset, and the limitation is void under subsection (2) of this
48 section.

1 (4) As to tangible personal property capable of receiving, storing,
2 processing or sending a digital asset, a fiduciary with authority over the
3 property of a decedent, protected person, principal or settlor:

4 (a) Has the right to access the property and any digital asset stored in
5 it; and

6 (b) Is an authorized user for purposes of any applicable computer fraud
7 and unauthorized computer access laws, including this state's law on
8 unauthorized computer access.

9 15-14-109. COMPLIANCE. (1) If a fiduciary with a right under this
10 chapter to access a digital asset of an account holder complies with subsec-
11 tion (2) of this section, the custodian shall comply with the fiduciary's
12 request in a record for:

13 (a) Access to the asset;

14 (b) Control of the asset; and

15 (c) A copy of the asset to the extent permitted by copyright law.

16 (2) If a request under subsection (1) of this section is made by:

17 (a) A personal representative with the right of access under section
18 15-14-104, Idaho Code, the request must be accompanied by a certified
19 copy of the letter of appointment of the representative or a small es-
20 tate affidavit or court order;

21 (b) A conservator with the right of access under section 15-14-105,
22 Idaho Code, the request must be accompanied by a certified copy of the
23 court order that gives the conservator authority over the digital as-
24 set;

25 (c) An agent with the right of access under section 15-14-106, Idaho
26 Code, the request must be accompanied by an original or a copy of the
27 power of attorney that authorizes the agent to exercise authority over
28 the digital asset and a certification of the agent, under penalty of
29 perjury, that the power of attorney is in effect; and

30 (d) A trustee with the right of access under section 15-14-107, Idaho
31 Code, the request must be accompanied by a certified copy of the trust
32 instrument that authorizes the trustee to exercise authority over the
33 digital asset.

34 (3) A custodian shall comply with a request made under subsection (1) of
35 this section not later than sixty (60) days after receipt. If the custodian
36 fails to comply, the fiduciary may apply to the court for an order directing
37 compliance.

38 (4) Instead of furnishing a copy of the trust instrument under sub-
39 section (2) (d) of this section, the trustee may provide a certification of
40 trust. The certification:

41 (a) Shall contain the following:

42 (i) That the trust exists and the date the trust instrument was
43 executed;

44 (ii) The identity of the settlor;

45 (iii) The identity and address of the trustee;

46 (iv) That there is nothing inconsistent in the trust with respect
47 to the trustee's powers over digital assets;

48 (v) Whether the trust is revocable and the identity of any person
49 holding a power to revoke the trust;

(vi) Whether a cotrustee has authority to sign or otherwise authenticate; and

(vii) Whether all or fewer than all cotrustees are required to exercise powers of the trustee.

(b) Must be signed or otherwise authenticated by a trustee;

(c) Must state that the trust has not been revoked, modified or amended in a manner that would cause the representations contained in the certification of trust to be incorrect; and

(d) Need not contain the dispositive terms of the trust.

(5) A custodian that receives a certification under subsection (4) of this section may require the trustee to provide copies of excerpts from the original trust instrument and later amendments designating the trustee and conferring on the trustee the power to act in the pending transaction.

(6) A custodian that acts in reliance on a certification under subsection (4) of this section without knowledge that the representations contained in it are incorrect is not liable to any person for so acting and may assume without inquiry the existence of facts stated in the certification.

(7) A person that in good faith enters into a transaction in reliance on a certification under subsection (4) of this section may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(8) A person that demands the trust instrument in addition to a certification under subsection (4) of this section or excerpts under subsection (5) of this section is liable for damages, including attorney's fees, if the court determines that the person did not act in good faith in demanding the instrument.

(9) This section does not limit the right of a person to obtain a copy of a trust instrument in a judicial proceeding concerning the trust.

15-14-110. CUSTODIAN IMMUNITY. A custodian and its officers, employees and agents are immune from liability for an act or omission done in good faith in compliance with this chapter.

15-14-111. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

15-14-112. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. section 7001 et seq., but does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

15-14-113. SEVERABILITY. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.